Congress of the United States

Washington, DC 20515

April 19, 2012

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

We are writing with regard to the Bulletin issued in December 2011, by your department related to the implementation of the Essential Health Benefits package as described in the Patient Protection and Affordable Care Act (PPACA). Please know that we appreciate your leadership to provide timely guidance on this issue. Nevertheless, as the Department of Health and Human Services (HHS) works to further define the 10 categories of services mandated in the statute, we hope that the upcoming Notice of Proposed Rulemaking will include policies recognizing the medical necessity of both preventing and treating obesity.

Obesity is a significant health concern in the United States, with 72 million obese Americans and 15 million severely obese adults. According to a 2010 report from the Congressional Budget Office (CBO), spending on healthcare for obese adults is increasing at a significantly higher rate than for non-obese adults. Healthcare spending directly attributable to obesity is projected to reach $344 billion by 2018 (21% of all direct care spending). Rising costs can be attributed to the fact that obesity substantially raises the risks posed by co-morbid diseases such as heart disease, stroke, Type 2 diabetes and high blood pressure. There is now ample evidence that severe obesity negatively affects maternal mortality, the course of pregnancy, and the development of the offspring.

We applaud the U.S. Preventive Services Task Force for its recommendation that clinicians screen all adult patients for obesity and offer intensive counseling and behavioral interventions to promote sustained weight loss for obese adults. This recommendation, along with its recommendation for intensive behavioral dietary counseling for adult patients with hyperlipidemia and other known risk factors for cardiovascular and diet-related chronic disease, can identify obesity early and help some patients achieve success. Yet, for many severely obese individuals, studies show diet and exercise alone are not effective long-term treatments. For this reason, if diet and exercise fail, other treatment options must be available. Patients must have access to the continuum of care needed to treat obesity and its comorbidities.

In addition to prevention, treatment of obesity is widely recognized by health care payers as an effective tool to manage chronic disease, including the benchmark "typical employer plans" as described in PPACA and federal programs. An analysis of 119 large employers found that 74 percent offered bariatric surgery as a benefit. Also, studies show that employers are increasingly driving use of Centers of Excellence for bariatric surgery and minimally invasive surgical procedures as a cost effective intervention to manage chronic disease. The Federal Employees Health Benefit Program (FEHBP) provides coverage of bariatric surgery for the severely obese, and the procedure is also a Medicare-covered benefit for certain beneficiaries (BMI $\geq$ 35, have at least one co-morbidity related to obesity, and previously unsuccessful with medical treatment). There are also 47 states that have some form of coverage of bariatric surgery under Medicaid.

The HHS Bulletin issued in December, 2011, indicates that bariatric surgery may, or may not, fall under the state-selected benchmark for covered services. For example, the Bulletin notes that the FEHBP Blue Cross Blue Shield (BCBS) Standard Option plan covers bariatric surgery, yet the benefit is not consistently covered by small employer health plans. This is concerning to us. Effective chronic disease management for this subpopulation of severely obese beneficiaries requires access to the full continuum of care, including access to obesity treatments such as bariatric surgery. There are several mandated categories of coverage under which meaningful access for severely obese individuals requires obesity treatment, particularly "preventive and wellness and chronic disease management," "hospitalization," and "maternity and newborn care."

We urge HHS to consider our concerns as it seeks to further refine the policies outlined in the Bulletin to provide meaningful access to medically necessary services within each of the 10 categories described in the statute, particularly for severely obese beneficiaries. It is important to note that benchmark plans as outlined in the Bulletin may not be structured to address the Secretary's obligations under PPACA, including the requirements that plans shall not design benefits that discriminate and shall take into account the health care needs of a diverse population. Therefore, we look forward to hearing more from HHS with regard to how these provisions will be enforced, including for obese individuals.

Thank you for your time and consideration of our concerns.

Sincerely,

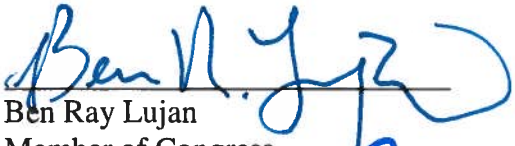
Edolphus "Ed" Towns
Member of Congress

Karen Bass
Member of Congress

Eleanor Holmes Norton
Member of Congress

Jesse Jackson Jr.
Member of Congress

Barbara Lee
Member of Congress



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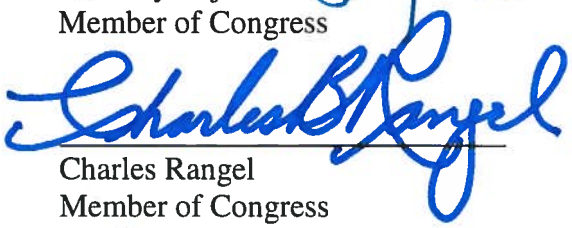

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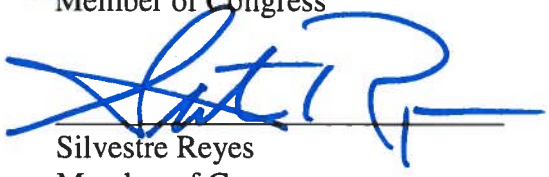

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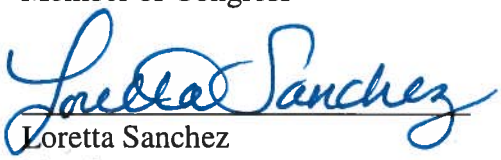

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Bobby Rush
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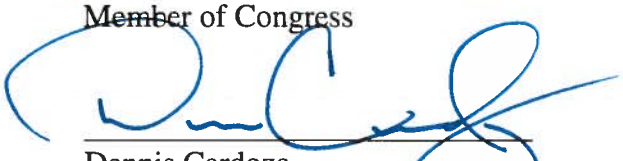

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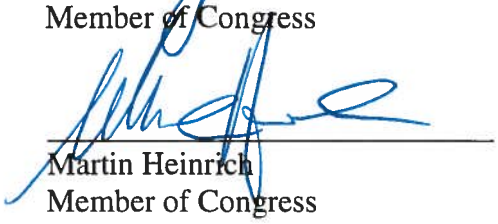
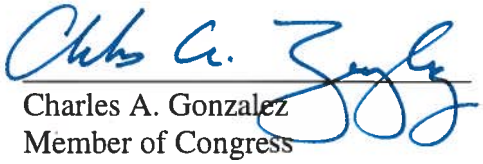


Martin Heinrich
Member of Congress



Charles A. Gonzalez
Member of Congress